

### **REMARKS**

Claims 1-3, 5-8 and 20-25 are pending. The Examiner's reconsideration of the rejections is respectfully requested in view of the remarks.

Claims 1-3, 5-8 and 20-25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US Patent App. 2001/0014868) in view of Kaminsky et al. (2001/00473087). The Examiner stated essentially that the combined teachings of Herz and Kaminsky teach or suggest all the limitations of Claims 1-3, 5-8 and 20-25.

Claims 1 and 5 are the independent claims.

Claim 1 claims, *inter alia*, "price setting means for dynamically setting a current retail price of said product in accordance with rules that specify conditions and parameters to determine the retail price of the product and to determine when to change the retail price and an amount of change in retail price of the product based on the retail sales state information of said product and current retail sales status information of said product." Claim 5 claims, *inter alia*, "price setting means for dynamically setting a current retail charge for accessing said digital content in accordance with that specify conditions and parameters to determine the retail charge of the digital content and to determine when to change the retail charge and an amount of change in retail charge of the digital content based on the sales state information of said digital content and with current sales status information of said digital content."

Multiple cited prior art references must suggest the desirability of being combined, and the references must be viewed without the benefit of hindsight afforded by the disclosure. The Examiner has chosen a multitude of references, apparently in hindsight, to reject Claims 1-3, 5-8 and 20-25, however, each reference relates to an entirely different art, for example, Herz relates to

selecting offers to make to a customer and Kaminsky relates to methods for receiving bids and determining acceptable bids. Given the different fields of the references, and the lack of a suggestion or motivation to combine the references, these references are not believed to be combinable. For example, consider that Herz and Kaminsky approach the problem of making a sale from two incompatible views. A method which both determines a price offered to individual (pre-bid) and a price acceptable to a merchant (post-bid) would include presenting two offers for sale to a customer for the same item, which one skilled in the art of sales would clearly want to avoid. Thus, Applicants believe that Herz and Kaminsky are not combinable.

Assuming arguendo that Herz and Kaminsky can be combined, Applicants turn now to the merits of the combined teachings of Herz and Kaminsky:

Herz teaches a method for selecting offers that are likely to result in profitable sales based on methods for predicting which offers a given consumer would be likely to accept (see paragraph [0037]). Herz does not teach or suggest how to “determine the retail price of the product and to determine when to change the retail price and an amount of change in retail price of the product based on the retail sales state information of said product and current retail sales status information of said product” as claimed in Claim 1, nor “determine the retail charge of the digital content and to determine when to change the retail charge and an amount of change in retail charge of the digital content based on the sales state information of said digital content and with current sales status information of said digital content” as claimed in Claim 5. Herz uses input including profiles, identify and goals of a shopper (see paragraph [0029-0036]) Nowhere does Herz teach or suggest that “retail sales state information” or “sales state information” is available, essentially as claimed in Claims 1 and 5, respectively. That is, Herz does not teach or

suggest how to determine the retail price based on the retail sales state information of said product nor determine the retail charge based on the sales state information of said digital content, as claimed in Claims 1 and 5. Therefore, Herz fails to teach or suggest all the limitations of Claims 1 and 5.

Kaminsky teaches a system for liquidating inventory using an auction (see Abstract). Kaminsky does not teach or suggest how to dynamically “determine the retail price of the product and to determine when to change the retail price and an amount of change in retail price of the product based on the retail sales state information of said product and current retail sales status information of said product” as claimed in Claim 1, nor dynamically “determine the retail charge of the digital content and to determine when to change the retail charge and an amount of change in retail charge of the digital content based on the sales state information of said digital content and with current sales status information of said digital content” as claimed in Claim 5. Kaminsky teaches a pricing strategy having a demand price and a buyer auction scheme (see Abstract), which operates at a level below a retail price. For example, see paragraph [0030], where a consumer is presented with a retail price and a current price - it is the current price that is determined by Kaminsky, which is different than the predetermined retail price. Further, Kaminsky’s prices are determined after receiving a number of bids (see for example, paragraphs [0051-0056]). Thus, no sales state information is available until after the bids are accepted and processed and the current price cannot be based on sales state information. Therefore, Kaminsky fails to cure the deficiencies of Herz.

The combined teachings of Herz and Kaminsky fail to teach or suggest “determine the retail price of the product and to determine when to change the retail price and an amount of change in retail price of the product based on the retail sales state information of said product

and current retail sales status information of said product” as claimed in Claim 1, nor dynamically “determine the retail charge of the digital content and to determine when to change the retail charge and an amount of change in retail charge of the digital content based on the sales state information of said digital content and with current sales status information of said digital content” as claimed in Claim 5.

Claims 2-3 and 20-23 depend from Claim 1. Claims 6-8 and 24-25 depend from Claim 5. The dependent claims are believed to be allowable for at least the reasons given for Claims 1 and 5. Reconsideration of the rejection is respectfully requested.

For the forgoing reasons, the application, including Claims 1-3, 5-8 and 20-25, is believed to be in condition for allowance. Early and favorable reconsideration of the case is respectfully requested.

Respectfully submitted,

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